

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 7049 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

SAMSON C CHRISTIAN & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

=====

Appearance :

MRS PC FERNANDEZ for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1 - 5.

=====

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/11/2006

ORAL JUDGMENT

1.The short facts of the case appear to be that

the petitioners belonging to Christian community have approached to this Court contending that the land bearing Survey No.643/B/1 admeasuring about 24-28 Gunthas is marked for Kabristhan as per the revenue record and the entry for such purpose is also mutated in the revenue record vide No. 5279 dated 10.05.1961 and 2602 dated 12.01.1951. As per the petitioners, the land is marked for Kabristhan and therefore, it should be used for Kabristhan. It is further the case of the petitioners that such Kabristhan is for utilisation of the persons following Christian religion, but there is no documentary evidence produced on record for such purpose. It is further the case of the petitioners that the land of Kabristhan is encroached over by certain persons belonging to Vaghri community and when the petitioners and other Christians wanted to make use of the land for burial/cremation of the dead body of the Christians, the same was opposed by the unauthorised occupants who are residing over the said land and there was law and order problem. The police complaint was also filed and thereafter, with the intervention of the authorities, matter was settled. However, with a view to assert the right over the said land for utilisation as graveyard for Christian community, which is popularly known as crematory, the petitioners have approached to this Court by preferring the present petition.

2. I have heard Ms. Fernandes, learned counsel for the petitioners, Mr. Soni, learned AGP for the State Authorities.
3. It appears that the revenue record, copy whereof is produced by the petitioners, does show that the land is marked for Kabristhan and therefore, if the land is marked for Kabristhan, it has to be used for Kabristhan and if anybody has made encroachment over the land, either for residential purpose or for any other purpose, the same cannot be allowed to be continued. However, whether marking of the said land for Kabristhan is exclusively for graveyard of Christian community or for any other community also, who as per their religion, bury the dead body, is not on record and therefore, in absence of any documentary evidence, it cannot be concluded that the land marked for Kabristhan is to be exclusively used as graveyard/crematory for the persons belonging to Christian religion. Since no satisfactory evidence is produced by the petitioners, it would be appropriate to direct the District Collector to examine the said aspects.
4. The affidavit-in-reply filed by the Prant Officer on behalf of the State Authorities shows that as per the State Authorities, the persons belonging to Vaghri community are residing in Survey No.643/B/1 since 1955-1956 and the

persons belonging to Christian religion have only started making use of the land marked for Kabristhan for burial of the dead body since 1996. As the same was objected and resisted by the residents belonging to the Vaghri community, the dispute arose and the State Officers and the Police had to intervene in the matter. It has also been stated in the affidavit-in-reply that the Mamlatdar, Kapadvanj and Sub-Divisional Magistrate had tried to give another land bearing Survey No.101 to the members of the Christian community which was refused and the order dated 01.09.1998 is also passed by the respondent No.3, i.e. Collector, Kheda District to assign the land Survey No. 569 admeasuring 0 A 20 Gunthas for Kabristhan but the same has also been refused. Therefore, it appears that the willingness was shown on the part of the State Officials to the petitioners and the persons belonging to the Christian religion to offer other alternative land. However, as per the affidavit-in-rejoinder filed on behalf of the petitioners, it appears that the insistence is for the land in question bearing Survey No.643/B/1 for utilisation as graveyard for Christian.

5. It is true that if the land is marked in the revenue record or if the Government has marked a particular land for a particular public purpose, it has to be used for such purpose and if

anybody, who has made encroachment over the said land or is using the land for the purpose other than the purpose marked for cannot insist as of right that the unauthorised encroachment or occupation or use should be allowed to be continued. The perusal of the notices which have been produced by the petitioners together with the affidavit-in-rejoinder prima facie shows that Mamlatdar has issued notices to the persons who are unauthorisedly occupying the land bearing Survey No.643/B/1 for eviction and thereafter, whether such proceedings are concluded or not is not coming on record. However, it deserves to be recorded that the State Government is required to enforce and ensure the use of the land for the purpose for which it is marked and no discriminatory treatment can be given to any citizen merely because a person is belonging to or is disciple of a particular religion or community.

6. Therefore, considering the facts and circumstances, I find that the following directions shall meet with the ends of justice:

(a) The District Collector, Kheda, respondent No.2 herein, either himself or through an officer not below the rank of Deputy Collector, shall examine the revenue record of the land bearing Survey No.643/B/1 and verify as to whether the land admeasuring 24-28 Gunthas is

marked by the Government for Kabristhan and if yes, then whether is the land also marked for utilisation of Kabristhan for a particular community or religion or not? As an outcome of the inquiry, the appropriate decision shall be taken by him for use of the land as Kabristhan and for a particular community or the religion, as the case may be, which comes out as an outcome of the said inquiry.

(b) The said officer shall also make a local investigation of the land in question and if any persons are in unauthorised occupation of any portion of the said land, which is marked and found for utilisation as Kabristhan, then after giving reasonable time for shifting or vacating of two months, such persons shall be evicted from the land in question. However, as and when such notice of eviction is given, and if the occupants are in lawful occupation of the said land, it would be open to them to make appropriate representation and if such a representation is made, the District Collector or the officer nominated for such purpose, shall examine the matter and if finds that the occupation is unauthorised or unlawful or as an encroacher, such persons shall also be evicted. In the case where such representation is made, the proceeding of inquiry and the decision and the eviction shall be completed within a period of three months from the issuance of such

notice.

(c) The District Collector shall ensure that the land is properly preserved, atleast by fencing, so as to avoid further encroachment over the said land.

(d) The land after removal of the encroachment, shall be permitted to be used for Kabristhan and for the community, which ultimately is found as eligible, by the District Collector as the outcome of the inquiry, as per the earlier directions.

(e) It is clarified that the earlier directions shall not operate as bar to the District Collector for allotting other alternative land to any unauthorised occupants over the land bearing Survey No.643/B/1, if permissible, in accordance with the prevailing policy of the State Government.

7. The petition is allowed in terms of the aforesaid directions. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

*bjoy